

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5099 OF 2005

Madhyukar Manohar Prabhakar.

... Applicant.

Versus.

The State of Maharashtra.

... Respondents.

Shri H.E.Palwe for the Applicant.

Ms.S.D.Shinde, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 16th August, 2005.

P.C.:

1. Heard the learned Advocate for the Applicant and the

learned A.P.P. for the Respondent-State.

2. The Applicant is Accused No.1 who is facing trial for offence punishable under sections 380 and 454 of the Indian Penal Code. It appears that the Applicant could not remain present before the learned Magistrate and therefore, warrant was issued against the Applicant. The Application for cancellation of warrant was rejected by the trial Court and hence the Applicant approached the Sessions Court. By order dated 22nd June 2005, the Sessions Court allowed the Revision Application filed by the Applicant and the order of the learned Magistrate issuing non-bailable warrant against the Applicant was set aside and the Applicant was directed to appear before the trial Court on 5th July 2005. The Revisional Court directed that the application for

exemption, if made by the Applicant, shall be considered on its own merits.

3. It appears that on 16th July 2005 when the matter was fixed before the trial Court, the Applicant did not remain present. An application was made by the Advocate for the Applicant for seeking exemption. In the said Application it was stated that the Applicant's wife requires dialysis thrice a week as both her kidneys have failed. It was stated in the Application that the Advocate was prepared to go on with the case in the absence of the Applicant and identity of the Applicant will not be challenged. The said Application was rejected by order dated 16th July 2005 and non-bailable warrant was ordered to be issued against the Applicant.

4. The learned Advocate for the Applicant stated that the wife of the Applicant is suffering from chronic failure of both the kidneys and for that reason she is required to undergo hemodialysis thrice a week. He has placed reliance on a certificate dated 19th July 2005 issued by the Kidney Care Clinic which discloses that the Applicant's wife has undergone hemodialysis on 16th July 2005. The Advocate for the applicant stated that on 29th August 2005 the Applicant will remain present in the trial Court.

5. The learned A.P.P. pointed out that the Applicant

is repeatedly remaining absent as a result of which the trial has been delayed. The learned A.P.P. submitted that no indulgence be shown to the Applicant.

6. I have considered the submissions. The documents annexed to the application prima-facie indicates that the Applicant's wife is suffering from renal failure and she requires to undergo hemodialysis thrice a week. The documents also show that on 16th July 2005 the Applicant's wife had to undergo hemodialysis. The Applicant has shown willingness to appear before the trial Court on 29th August 2005. Considering the facts of the case, I am of the view that the order dated 16th July 2005 deserves to be quashed and set aside subject to condition that the Applicant will remain present before the learned Magistrate on 29th August 2005. The Applicant will be entitled to apply for exemption from personal appearance provided he remains present before the trial Court on 29th August 2005.

7. Hence I pass the following order:

- (i) The impugned order dated 16th July 2005 passed by the trial Court issuing non-bailable warrant against the Applicant is quashed and set aside subject to condition that the Applicant will remain personally present before the

learned Magistrate on 29th August 2005.
If the Applicant does not remain present
on the said date the learned trial Court
will be free to pass appropriate orders.

(ii) If the Applicant remains present before
the trial Court on 29th August 2005, he
will be entitled to apply for exemption
from personal appearance. If such
application is made, it will be
considered by the trial Court in
accordance with law.

(iii) Parties and the trial Court to act on an
authenticated copy of this order.

Judge.